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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 5396 of 2007
Date of decision: 18.10.2007

Ashok Dhariwal **...Petitioner**

Versus

Ram Avtar **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kul Bhushan Sharma, Advocate for the petitioner.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated August 25, 2007 passed by learned Civil Judge (Senior Division), Gurgaon whereby prayer made by the petitioner/defendant for production of expert witness, namely, Y.D. Adhikari was rejected.

Brief facts of the case would be relevant to appreciate the conduct of the petitioner/defendant. The present suit was filed by the respondent/plaintiff on April 28, 1994 seeking ejectment of the petitioner/defendant and for recovery of mesne profit, damages and compensation for use and occupation of the premises. Vide order dated February 7, 2004, evidence of the petitioner/defendant was closed. This order was challenged by the petitioner/defendant before this court by filing Civil Revision No. 1187 of 2004. As a matter of indulgence, this Court taking a lenient view of the matter directed as under:-

> "In view of the judgment referred to above and facts of the present case, this revision petition is allowed. Court below is directed to grant one more opportunity to the petitioner to produce witness namely Sh. Y.D. Adhikari in Court. On the next date of hearing, the trial court shall fix a date for appearance of the witness named above.
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> Order passed is subject to payment of Rs. 3000/- as costs to be paid by the petitioner to the respondent on the next date of hearing before the trial court. It is made clear that

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if the petitioner fails to avail the opportunity granted by this Court, this revision petition shall be deemed to have been dismissed."

The above referred order was passed by this Court on December 12, 2005. Thereafter, as is evident from the impugned order, the matter was fixed before the learned Court below on December 21, 2005 and was adjourned on that date for March 01, 2006 but the petitioner/defendant neither produced copy of the order passed by this Court nor the witness. It was only after repeated adjournments running into for about two years, that on August 21, 2007 petitioner/defendant produced a copy of the order dated December 12, 2005 passed by this Court to make a prayer that in terms of the order of this court, petitioner/defendant be permitted to produce evidence of a witness, namely, Y.D. Adhikari. The prayer was declined by the learned Court below by passing the following orders:-

"As per the order passed by the Hon'ble High Court one more opportunity to produce the witness namely Y.D.Adhikari was granted. It was also ordered that on the next date of hearing, the trial court shall fix the date of appearance of the witness named above. In the same order it was directed that it is made clear that if the petitioner fails to avail the opportunity granted by this court, this revision petition shall deemed to have dismissed before this Court. This case was fixed from 6.10.05 for awaiting of the order from Hon'ble High Court for 21.12.05. On 21.12.05, the case was again adjourned for awaiting of the order for 1.3.06, neither on 21.12.05 nor on 1.3.06, the defendant Ashok Dhariwal produced the copy of the order dated 12.12.05 passed by the Hon'ble High Court, nor produced the witness namely Sh. Y.D. Adhikari. The certified copy of this order dated 12.12.05 passed by the Hon'ble High Court has been produced by the plaintiff (sic defendant) himself on 21.8.07. The defendant Ashok Dhariwal himself failed to bring evidence before this court. In view of the order, which has made clear that if the plaintiff (sic petitioner) fails to avail the opportunity granted by this Court, the petition shall be deemed

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to have been dismissed. So, in these circumstances, the evidence of the defendant is automatically deemed to be closed. Let the case be fixed for 24.9.07 for rebuttal evidence, if any, and arguments."

Learned counsel for the petitioner submitted that the delay in the process has not caused any damage to the respondent as the petitioner/defendant had been paying rent to the respondent/plaintiff and further that it was the fault of the Court in not proceeding with the case, even if the petitioner/defendant had not produced copy of the order passed by this Court. However, he could not reply to the query of the Court as to when the copy of the order of this Court passed in C.R. No. 1187 of 2004 was applied and when the same was supplied to him. The order passed by this Court granting opportunity to the petitioner to produce witness, namely, Y.D. Adhikari on the date to be fixed by the trial Court, on the next date of hearing already fixed, was subject to payment of Rs. 3000/- as costs. The order further clarified that in case petitioner failed to avail of opportunity granted, the revision shall be deemed to have been dismissed. Admittedly after passing of the order by this Court on December 12, 2005, the next date of hearing was December 21, 2005, which was thereafter adjourned to March 1, 2006. On both the dates neither the petitioner paid the costs nor produced witness for examination. It was only nearly after two years that copy of the order passed by this Court on December 12, 2005 was sought to be produced to avail of opportunity granted by this Court.

In view of my above discussions and seeing the conduct of the petitioner, at this stage the petitioner/defendant is not entitled to take any benefit arising out of the order passed by this Court on December 12, 2005 simply for the reason that petitioner did not avail of opportunity in terms of the liberty granted by this Court and as per the order itself in case of failure, revision was deemed to have been dismissed.

Accordingly, the Revision petition is dismissed in limine.

October 18, 2007 **(Rajesh Bindal)**
Pka **Judge**